SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/11/2002 CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES P. M. Espinoza
Deputy

LC 2000-000765

FILED: _____

BRETT LAYNE DE CARDOVILLE JAMES T BLOMO

v.

STATE OF ARIZONA SAMUEL K LESLEY

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8966454

Charge: DRIVING WHILE INTOXICATED

DOB: 06/24/68

DOC: 04/15/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on March 12, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules

of Practice. This Court has considered the Memoranda submitted by counsel and the record of proceedings and transcript from the Phoenix City Court.

Appellant, Bret Layne De Cardoville, was charged by complaint by the Phoenix City Court with the crime of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1381(A)(1). Appellant entered a plea of not guilty and filed a Motion to Suppress All Statements Made to the Investigating Officers. Appellant's Motion to Suppress was heard before the Hon. Ken Skiff, Phoenix City Court Judge, on November 15, 2001 in an evidentiary hearing. At the conclusion of the evidentiary hearing, the trial judge denied Appellant's Motion to Suppress finding that Appellant had not been informed of his Miranda Rights[1] because the Miranda Rights were not required even though Appellant was in custody. The trial court found that Appellant was not subjected to questioning by the police officer, and that the police officer only responded to voluntary questions posed by Appellant to the police officer. The trial judge found Appellant's statements were made voluntarily, and were thus admissible.[2]

Appellant was found guilty after a trial on November 16, 2001 and was sentenced to serve 10 days in jail (9 days were suspended upon successful completion of an alcohol screening and substance abuse education or counseling program), and Appellant was ordered to pay a $425.00 fine. Appellant has filed a timely Notice of Appeal in this case.

The first issue raised by the Appellant is that the trial judge erred in denying Appellant's Motion to Suppress statements allegedly made in violation of Appellant's Miranda Rights. Police officers are required to give the Miranda warnings when a

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).
[2] R.T. of November 15, 2001, at page 8.

suspect is in custody and is interrogated while in custody.[3] Clearly, Appellant was in custody at the time conversation occurred between himself and Phoenix Police Officer, Steven Coburn. Officer Coburn had placed Appellant under arrest after giving him a field sobriety test and placed him in a patrol car to transport Appellant to the DUI van for further processing.[4] Appellant was in the backseat of the patrol car handcuffed and was concerned about what his blood alcohol reading would be and began asking Officer Coburn questions.[5] Officer Coburn testified that it was his standard practice not to ask any questions after a subject has been placed under arrest until they've been informed of their Miranda Rights.[6]

The trial judge made the following findings:

> All right. Well, I think the law's pretty clear that the statements made voluntarily by a person in custody are admissible under these circumstances and I believe what the officer testified occurred and I think that him simply - - his only response being answering questions posed by the Defendant doesn't - - in no way makes this case any different from any other situation where a Defendant in custody makes voluntary statements. So I'm going to find that the statements were made voluntarily and are admissible.[7]

The trial judge's findings are supported by the record. Though Appellant was in custody, he was not questioned by Officer Coburn. Officer Coburn did not interrogate Appellant, but only responded to the questions posed by Appellant. The

[3] *Miranda v. Arizona*, supra; *State v. Landrum*, 112 Ariz. 555, 544 P.2d 664 (1976).
[4] R.T. of November 15, 2001, at page 2.
[5] Id. at pages 2-5.
[6] Id. at page 3.
[7] Id. at pages 7-8.

Phoenix police officers were not required to advise Appellant of his Miranda Rights, and their failure to do so does not affect the voluntariness of statements made by Appellant en route to the DUI van in Officer Coburn's presence. This Court, therefore, concludes that the trial judge correctly denied Appellant's Motion to Suppress.

The second issue raised by Appellant concerns the denial of Appellant's Motion for Mistrial after Officer Coburn testified during the trial that he had given over 300 field sobriety tests and that he had let people go after performing the field sobriety tests. The officer answered:

> Yes, I have performed HGN on individuals how I picked up an odor of alcohol on them but they were not over - - they did not exhibit the cues for impairment so they were released or a cab was called and they were driven home.[8]

Appellant's trial counsel moved for a mistrial claiming that Officer Coburn had improperly mentioned a breath alcohol result that was not admissible in the case. This contention is not supported by the record. Appellant's counsel also objected that Officer Coburn had testified about an ultimate issue for the trier of fact; whether Appellant was impaired. The trial court overruled these objections finding that Officer Coburn's testimony constituted "a natural inference" and "not a comment directly on his opinion in this case."[9]

This Court finds no error in the trial court's ruling.

IT IS THEREFORE ORDERED affirming the judgment and guilt and sentence imposed by the trial court.

[8] R.T. of November 16, 2001, at page 103.
[9] Id. at page 113.

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IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all further and future proceedings in this case.